IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Bail Appl..No. 3573 of 2007()

CRIME NO. 136/07 OF MANJERI POLICE STATION

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PETITIONER/ACCUSED NO.1

KARUTHEDATH HAMZA, S/O. MOIDEEN,
AGED 40 YEARS, NARUKARA AMSOM, THEKKETHODI.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA, THROUGH THE
SUB INSPECTOR OF POLICE, MANJERI POLICE
STATION, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3573 of 2007

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Dated this the 19th day of June, 2007

O R D E R

The petitioner is the first accused in a crime registered, inter alia, under Section 9(B)(2) of the Explosive Substances Act and Section 286 I.P.C. The crux of the allegations is that explosive substances were kept in the compound of the house of the petitioner. The second accused is the younger brother of the petitioner. He has already been arrested and enlarged on bail. The petitioner is allegedly an activist of an organisation by name National Democratic Front (NDF in short). The petitioner apprehends imminent arrest. His application for bail was rejected by the learned Sessions Judge by Annex.A1 order. The learned counsel for the petitioner submits that his brother, the second accused, when he was arrested and interrogated has owned the responsibility for the commission of the offence and in these circumstances it is not necessary at all to insist on custodial interrogation of the petitioner.

2. The learned Prosecutor opposes the application. The learned Prosecutor submits that custodial interrogation of the

petitioner is essential to bring out the truth and detailed facts. How did the explosive substances reach the scene of the crime; who had brought it etc. will have to be ascertained after thorough interrogation of the petitioner. The fact that the second accused had given convenient details is no reason for the police not to insist on custodial interrogation of the petitioner. I find merit in the opposition by the learned Prosecutor. Use of explosive substances for nefarious purposes must be frowned upon by the society. The police must conduct a proper investigation and ascertain the source of the explosive substances and the circumstances under which it reached the compound of the petitioner.

3. I am not in any view satisfied that this is a fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioner. The petitioner must resort to the ordinary and regular procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. This application is hence dismissed with the above observations.

(R. BASANT)
Judge

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